

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

PRE-MUR 330

DATE ACTIVATED: July 19, 1996

DATE TRANSFERRED TO

CURRENT STAFF: September 12, 1996

STAFF MEMBER: Anne A. Weissenborn

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Friends for Fasi and its treasurer  
China Airlines  
Longevity International Enterprises Corporation  
Frank Fasi

RELEVANT STATUTES: 2 U.S.C. § 441e  
11 C.F.R. § 100.7(a)(1)(iii)  
11 C.F.R. § 110.4(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

This matter arises as the result of a referral dated June 4, 1996, from Robert Y. Watada, Executive Director of the State of Hawaii Campaign Spending Commission ("Campaign Spending Commission"). The referral is in turn based upon information discovered during the Campaign Spending Commission's inquiry into the campaign finance records of Friends for Fasi (the "Committee"), the campaign committee of Frank Fasi, former mayor of the City and County of Honolulu. This information raises the possibility that, from at least 1988 to the present, the Committee has accepted in-kind contributions in the form of reduced rental costs for office space

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at the Chinatown Cultural Plaza Shopping Center in Honolulu, the owners of which may be foreign nationals.

## II. FACTUAL AND LEGAL ANALYSIS

### a. The Law

The Federal Election Campaign Act of 1971, as amended, ("the Act"), prohibits a foreign national from making a contribution of money or anything of value in connection with an election to any political office, either directly or through any other person. 2 U.S.C. § 441e. It is also unlawful under the Act for any person to solicit, accept, or receive such a contribution from a foreign national. Id. Section 441e defines a foreign national as

(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) as an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined at section 1101(a)(20) of title 8.<sup>1</sup>

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<sup>1</sup> For purposes of 22 U.S.C. § 611(b), a "foreign principal" includes: -

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

For purposes of 8 U.S.C. § 1101(a)(20), "[t]he term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

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The Commission's regulations include the following prohibitions at 11 C.F.R. § 110.4(a):

- (1) A foreign national shall not directly or through any other person make a contribution, or an expenditure, or expressly or impliedly promise to make a contribution, or an expenditure, in connection with a convention, a caucus, or a primary, general, special or run-off election in connection with any local, State, or Federal public office.
- (2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.
- (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Foreign national corporations are thus flatly prohibited from making contributions to Federal, state and local campaigns. Individuals who are foreign nationals may not participate in decisions made by domestic corporations regarding contributions, including in-kind contributions, to either Federal or non-federal campaign committees and candidates. In making determinations regarding the legality of contributions from a corporation that is a domestic subsidiary of a foreign national corporation, the Commission has applied a two-fold test: (1) whether the source of the funds contributed was foreign or domestic, and (2) whether those who participated in the decision to contribute were all United States citizens or permanent resident aliens. See MUR 2892 (Friends for Fasi Haseko (Hawaii), Inc., et al.) and Advisory Opinions 1989-20, 1985-3, and 1981-36. See also Advisory Opinion 1992-16.

Under the Act, the term "contribution" includes any gift, subscription, loan, advance, or anything of value made by any person. 2 U.S.C. § 431(8)(A)(i). The Commission's regulations define "anything of value" to include all in-kind contributions such as the provision of any goods

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or services at a charge which is less than the usual and normal charge for such goods or services.

11 C.F.R. § 100.7(a)(1)(iii)(A). If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. 11 C.F.R. § 100.7(a)(1)(iii)(B).

**b. Allegations in the Referral**

As stated above, the Campaign Spending Commission has alleged that the Committee may have received in-kind contributions in the form of reduced rent for its office located in the Chinatown Cultural Plaza Shopping Center ("Cultural Plaza") in Honolulu. The referral states that the Committee has been making rent payments to Longevity International Enterprises Corporation ("Longevity") which has also been the entity advertising vacancies at the shopping center. (Attachment 1, at 1, 5-10). The referral also notes that Longevity's Articles of Incorporation, which are attached to the referral, (Attachment 1 at 12-31), name nine officers and/or directors, "most listing the Republic of China as their resident address."

According to an article in the April 9, 1996 issue of the Honolulu Star Bulletin attached to the referral, the owner of Cultural Plaza is China Airlines of Taiwan, (Attachment 1 at 32), while Longevity has been the managing company since December, 1994. The same article also includes a cursory reference to "Taiwanese managers" as having been the predecessors of the shopping center's current management.

The Campaign Spending Commission asserts that the Committee has been renting an office at Cultural Plaza since at least 1988 at a rental rate of \$800 per month for approximately 2,700 square feet of space, or at a cost of approximately \$.30 per square foot. The referral also

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states that in June, 1996, Longevity was advertising vacancies at Cultural Plaza at \$1.70 per square foot, a rate which the Campaign Spending Commission asserts is "down considerably from the market rate for similar space in recent years."

**c. Analysis**

**1. Status of Ownership of the Chinatown Cultural Plaza Shopping Center**

The ownership of the Chinatown Cultural Plaza Shopping Center cannot be resolved with the information presently in hand. It is not clear whether Longevity or China Airlines or some other entity owns this enterprise. What conflicting information is available extends back to 1989, when, on June 20, in his answer to the complaint in MUR 2892, counsel for Longevity stated that this company "is a California corporation, licensed to do business in the State of Hawaii. . . . Longevity's main business in the State of Hawaii is [sic] the owner and landlord of a shopping complex known as the Chinese Cultural Plaza . . . located at 100 North Beretania Street [in Honolulu]." More recently, an August 5, 1996, Dunn & Bradstreet report cites Longevity as the current "operator" of the Chinatown Cultural Plaza Shopping Center. (Attachment 2). The current CDB real estate property data base for Hawaii lists Longevity as the "owner" of Cultural Plaza and a relatively recent sale date of December 30, 1993. (Attachment 3). Finally, as stated above, the news article attached to the referral from the Campaign Spending Commission cites China Airlines as the "owner" of the shopping center, China Airlines being owned in turn by the Government of the Republic of China on Taiwan.

In MUR 2892, the Commission in 1991 found no probable cause to believe that Longevity had violated 2 U.S.C. § 441e on the basis of its asserted status as a California corporation which was not a subsidiary of another entity. However, in the Articles of

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Incorporation filed by Longevity with the Department of Commerce and Consumer Affairs, State of Hawaii, on April 17, 1995, Taipei, Taiwan is listed as the residence address for four of the company's nine directors. (Attachment 1 at 13, 23-24). Further, the names of the directors and officers listed in the Dunn & Bradstreet report cited above do not, with one possible exception, match the names of the officers and directors listed in the 1995 Articles of Incorporation.

Therefore, it is not clear whether Longevity should still be deemed a domestic corporation. Nor is it known what role, if any, directors or officers of Longevity who are not U.S. citizens would have played in decisions regarding rental costs which may have been charged the Committee outside the ordinary course of business.

If China Airlines, however, is the owner of Cultural Plaza, it appears clear, given the foreign government ownership of this enterprise, that violations have occurred, provided that the rentals charged the Committee were outside the ordinary course of business.

## **2. Rental Costs**

As stated above, the Campaign Spending Commission contends that the Committee has been renting office space at Cultural Plaza since at least 1988 at a rate of \$800 per month for approximately 2,700 square feet of space. Thus, the cost to the Committee per month would have been \$.296 per square foot. The Spending Commission indicates that this amount has been well below market value in Honolulu.

According to Comparative Statistics of Industrial and Office Real Estate Markets, which is produced annually by the Society of Industrial and Office Realtors ("SIOR"), Washington, DC, a \$.296 rate would in fact be far below the average for comparable property in the Honolulu area during the period 1988-1995, as the chart below demonstrates. While the referral from the

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Campaign Spending Commission employs a monthly calculation for the price per square foot, it is customary in the industry to apply a yearly calculation, as is used in this chart.

**Inside Central Business District, Honolulu<sup>2</sup> (Average price per square foot per year)**

		<b>Low</b>	<b>High</b>	<b>Weighted Average<sup>3</sup></b>
1988	Class A: <sup>4</sup> Class B <sup>5</sup>	Not available Not available		
1989	Class A Class B	25.20 22.80	36.00 27.00	30.60 24.90
1990	Class A Class B	27.00 25.20	37.80 28.80	32.40 27.00
1991	Class A Class B	Not available Not available		
1992	Class A Class B	31.20 24.60	40.40 34.90	32.25 26.40
1993	Class A Class B	30.36 25.20	49.80 36.60	34.56 31.80

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<sup>2</sup> SIOR defines the central business district as space located near the historical urban core commonly associated with traditional government and financial districts in most cities.

<sup>3</sup> SIOR defines weighted average as the average quoted rental rate weighted by the vacant space available at the rental rate in each class.

<sup>4</sup> According to SIOR, Class A property has an excellent location, high-quality tenants, high-quality finish, well-maintained, professionally managed and usually new, or older buildings that are competitive with new buildings.

<sup>5</sup> SIOR defines Class B property as having good location, professionally managed, fairly high-quality construction and tenancy. Class B buildings generally show very little functional obsolescence and deterioration.

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1994	Class A	21.60	49.80	30.00
	Class B	12.00	35.88	24.00
1995	Class A	24.60	37.80	27.72
	Class B	18.00	33.00	24.00

Using these figures, it appears that the office rent charged the Committee since 1988 has been outside the ordinary course of business.<sup>6</sup> The class of the property where Friends for Fasi has its office is not known, although the Dun & Bradstreet report describes the property's location as "central business section on well traveled street." Nor is the actual rental price in years other than 1995 known at present. However, if one applies only the most conservative figure in the chart above, or the \$18.00 per year per square foot (or \$1.50 per square foot per month) shown as the low figure for Class B property in 1995, the yearly charge which would have represented the ordinary course of business with regard to Cultural Plaza would have been \$48,600 (\$18.00 x 2,700) rather than the \$9,590 (\$.296 x 2,700 x 12 months) apparently charged to the Committee by the owners of Cultural Plaza. Applying these figures to all eight years at issue, the total amount in violation could be as much as \$312,000.<sup>7</sup>

<sup>6</sup> In the graph which constitutes Attachment B of the referral (Attachment 1 at 11), the Campaign Finance Commission uses a monthly calculation which apparently assumes a rate of \$.30 per square foot for the amount charged the Fasi committee in each of the years between 1988 and the present. The basis for the Honolulu Averages used in the graph is not stated. These Averages as applied in the graph exceed to a certain extent the SIOR figures for Class A and Class B properties divided into monthly portions; however, both sets of figures are considerably more than the amount apparently charged the Committee over the same time period.

<sup>7</sup> The Committee has apparently paid \$800 per month [at \$.296 per square foot] x 12 months = \$9,600 per year x 8 years = \$76,800 rather than at least \$48,600 [at \$18.00 per square foot per year] x 8 years = \$388,800. \$388,800 - \$76,800 = \$312,000 in-kind contribution.

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**d. Conclusions**

Based on the foregoing information, and in light of the uncertainties about the ownership of the Cultural Center, this Office recommends that the Commission open a MUR and find reason to believe that Longevity International Enterprises Corporation and China Airlines have violated 2 U.S.C. § 441e. This Office also recommends that the Commission find reason to believe that Friends for Fasi has violated 2 U.S.C § 441e. According to information in the referral, the candidate, Frank Fasi, has signed the disclosure forms submitted by the Committee to the State of Hawaii Campaign Spending Commission and attached to the referral. (Attachment 1 at 3). No signature by a treasurer appears on these forms. Therefore, this Office further recommends that the Commission find reason to believe that Frank Fasi violated 2 U.S.C. § 441e. Finally, this Office recommends that the Commission approve the attached subpoenas for documents and orders for answers to interrogatories.

**III. RECOMMENDATIONS**


1. Open a MUR.
2. Find reason to believe that Longevity International Enterprises Corporation violated 2 U.S.C. § 441e.
3. Find reason to believe that China Airlines violated 2 U.S.C. § 441e.
4. Find reason to believe that Friends for Fasi and its treasurer violated 2 U.S.C. § 441e.
5. Find reason to believe that Frank Fasi violated 2 U.S.C. § 441e.

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6. Approve the attached Factual and Legal Analyses.
7. Approve the attached Subpoenas to Produce Documents and Orders for Answers to Written Questions.
8. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

11/26/96  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachments:

1. Referral materials
2. Dunn & Bradstreet Report
3. CDB Real Estate Property Data Base Report
4. Factual and Legal Analyses (3)
5. Subpoenas and Orders (3)

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**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary  
**FROM:** Office of General Counsel *KJS*  
**DATE:** November 26, 1996  
**SUBJECT:** Pre-MUR 330-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

72 Hour Tally Vote ☒  
Sensitive ☒  
Non-Sensitive ☐

24 Hour Tally Vote ☐  
Sensitive ☐  
Non-Sensitive ☐

24 Hour No Objection ☐  
Sensitive ☐  
Non-Sensitive ☐

Information ☐  
Sensitive ☐  
Non-Sensitive ☐

Other ☐

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Other (See Distribution below)

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